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CITY OF CALIENTE

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January 3, 2008

United States Department of Energy
Office of Civilian Radioactive Waste Management
1551 Hillshire Drive M/S 010
Las Vegas, NV 89134
Attn: Dr. Jane Summerson

RE: City of Caliente Comments to 1) *Draft Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0250F-S1D) ("Repository DSEIS"); 2) *Draft Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High Level Nuclear Waste at Yucca Mountain, Nye County, Nevada—Nevada Rail Transportation Corridor*, (DOE/EIS-0250F-S2D) ("Rail Corridor DSEIS"); and 3) *Draft Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0369D) ("Rail Alignment DEIS").

Dear Dr. Summerson:

- 1 [The City of Caliente (the "City") has reviewed the subject three documents prepared by the Department of Energy (DOE) and is offering the following comments thereto in hopes that decisions made by DOE regarding Yucca Mountain repository system development, including transportation, will be well informed as to minimization of system related impacts and risks and maximization of system related benefits in the Caliente area. Accordingly, the City encourages DOE to fully consider the following comments as it works to finalize each of the environmental documents and makes decisions related thereto.

Since 1984, the City has actively participated with DOE in seeking to resolve this Nation's commitment to effectively managing spent nuclear fuel and other high-level radioactive waste. The City's involvement in this process has been driven primarily by a fiduciary responsibility to protect the health, safety and welfare of residents of the community. As a consequence, the City has consistently sought to understand and minimize the impacts of the repository system; to understand and minimize the risks of the repository system; and to understand and maximize any potential economic and fiscal benefits of the repository system to the Caliente area.

The City has recognized that the Nation, through directive of the United States Congress, is committed to constructing and operating the Yucca Mountain repository as necessary to safely manage spent nuclear and other high-level radioactive wastes. The City has further recognized the critical role that nuclear energy is likely to play in meeting our Nation's energy requirements in the future, especially given growing concerns with fossil fuel-related carbon emissions and climate change. It has now become apparent that these mutually dependent national goals may depend upon the placement and operation of repository system transportation infrastructure in the Caliente area. The City intends to continue an active dialogue with the DOE to ensure that the development, operation and possible decommissioning of any such facilities is done in a manner which minimizes local impacts and risks and maximizes local economic benefits and risks. The following comments to the DOE's environmental documents are a continuation of that on-going dialogue.]

2 [The City is convinced that the October 2007 NEPA documents released by DOE for public review and comment do not effectively disclose the nature of impacts which may attend construction and operation of repository transportation related infrastructure in the Caliente area. As such, the City is concerned that the documents will not support informed DOE and Nuclear Regulatory Commission decisions regarding the Yucca Mountain repository system. Of greatest concern to the City is the potential for unanticipated impacts to result and that both known and unanticipated impacts will not be adequately mitigated.] Specific comments regarding these concerns follow.

3 1. [The 2006 decision (see Page 1-4 of Repository DSEIS) by DOE to use a transportation aging and disposal canister (TAD) to transport (by rail), age and dispose of commercial spent nuclear fuel has not been the subject of nor does said decision enjoy any relevant completed NEPA coverage. Hence, the Purpose and Need statement in the Repository Final SEIS must be expanded to include providing DOE with the information it needs to support a decision to implement a rail-dependent TAD-based repository system.]

4 2. [No alternatives to the Proposed Action (other than No Action) are analyzed in the Repository DSEIS. Given that the Proposed Action analyzed in the DSEIS includes implementation of a rail-dependent TAD-based repository system, alternatives to the Proposed Action including implementation of mostly legal-weight truck; a mostly overweight truck; or rail to truck intermodal dependent TAD-based repository systems (among other possible alternatives) should have been analyzed fully in the DSEIS. These alternatives may serve to avoid or minimize impacts in the Caliente area, particularly related to private property, of the rail-dependent TAD-based repository system. As a decision-support document, the DSEIS must be prepared so as to assist DOE in making decisions which consider the possibility that either a rail-dependent repository system may be now or become infeasible and/or a TAD-based repository system may now or become infeasible. Because Congress has directed DOE to pursue development of the repository at Yucca Mountain, DOE must provide adequate NEPA analysis of all alternatives which might ultimately be required to be implemented to comply with Congressional directive. DOE has limited the scope of alternatives analyzed in the DSEIS to such a degree so as to have limited its ability to comply with Congressional directive. Alternatives, including a mostly legal-weight truck; a mostly overweight truck; or rail to

truck intermodal dependent TAD-based repository system (among other possible alternatives) must be analyzed in detail within the Repository Final SEIS.]

- 5 3. [The Walker River Paiute Tribal Council's decision to oppose shipment of SNF and HLW across the Walker River Paiute Reservation renders the Mina Route infeasible and pursuant to NEPA it should have been identified by DOE as an alternative considered but eliminated from detailed consideration in the DSEIS, the Rail Corridor SEIS and the Rail Alignment DEIS. By carrying the Mina Route forward for detailed analysis in the Rail Alignment DEIS, DOE has exacerbated uncertainty regarding not if, but when and how the Yucca Mountain Repository System will be implemented. What was originally to have been a 1998 repository opening has now been pushed out to at least 2017. For nearly 25 years the City has been forced to monitor and seek to influence DOE planning regarding the repository system to protect resident interests all the while not knowing the manner and timing of how the system, particularly transportation, would be implemented. DOE's insistence in carrying the infeasible Mina Corridor/Alignment forward for detailed NEPA analysis suggests that the Department may yet harbor hope that said alternative may be implementable. The City of Caliente and other jurisdictions located along both the Mina and Caliente rail alignments deserve for DOE to make final decisions regarding transportation modes and routes to Yucca Mountain. DOE final NEPA documents should be conclusive regarding the Mina route, describing same as an alternative considered but eliminated from detailed analysis.]
- 6 4. [The last bullet on Page 1-14, Section 1.6 of the Rail Alignment DEIS indicates that DOE intends to use the document to, among other things (all of which are part of the Proposed Action), ... "determine what mitigation measures to implement". In order for the Rail Alignment EIS to serve as the NEPA document upon which a determination of which mitigation measures will be implemented to mitigate impacts of construction and operation of a specific rail alignment, the document must 1) identify and describe reasonable measures to mitigate impacts (consistent with the five means of mitigation identified by NEPA); 2) evaluate the environmental impacts of implementing alternative measures identified to mitigate rail construction and operational impacts; and 3) evaluate the expected benefit that implementation of alternative mitigation measures will have with regard to avoiding, minimizing, rectifying, reducing or compensating impacts. Only after these analyses have been completed and offered for public review as a component of a NEPA document, can DOE be in a position to "determine what mitigation measures to implement" in a manner consistent with NEPA. These specific requirements are not met with the very limited description of mitigation provided in Chapter 4, Chapter 7 or elsewhere in the DEIS.]
- 7 5. [The range of alternatives analyzed by DOE in the Rail Alignment DEIS is not sufficient to adequately provide options which serve to avoid or significantly minimize impacts, particularly to private property. In particular, DOE has previously considered location of a rail-to-truck intermodal facility just south city-owned land just south of the Caliente city-center. The City has completed a conceptual engineering feasibility study which demonstrates that DOE and Meadow Valley Industrial Park related rail

infrastructure could be co-located at this site.¹ The Final Rail Alignment EIS should analyze in detail location of the interchange and staging yards at this location. Such an alternative would minimize impacts to private property in the Indian Cove and Upland areas as well as minimize noise, radiation exposure and indirect private property impacts within the center of Caliente.]

- 8 6. [The description of the Proposed Action in the Rail Alignment DEIS is not clear with regard to whether DOE intends to acquire easements or right-of-way for the temporary construction and permanent rail alignment disturbance area only or whether DOE will acquire each entire parcel across which the alignment crosses. In addition, it is not clear whether DOE will only acquire access from willing sellers or whether DOE will pursue condemnation as an alternative to secure needed access to private parcels. The manner in which DOE intends to secure access to private property within the City of Caliente is critical to the evaluation of impacts to private property. If DOE intends, as needed, to secure access through condemnation, the FEIS must disclose this as condemnation proceedings could represent a financial hardship on private property owners faced with the prospect of a prolonged court-battle with DOE over access rights.]
- 9 7. [While the Rail Alignment DEIS indicates a DOE preference for shared-use of the Caliente route, it does not specifically indicate whether either the interchange or staging yards would also be available for use by commercial rail operations. This is a very important omission in that the City of Caliente has entered into a letter of intent with a pipe coating manufacturer interested in locating in the City's Meadow Valley Industrial Park and said firm is proposing to develop a set of rail sidings to stage deliveries of materials at the same location as DOE interchange yard in Caliente.]
- 10 8. [Page 2-7, Section 2.2, 2nd paragraph of the Rail Alignment DEIS states "DOE has developed potential mitigation measures as a step toward reducing the environmental impacts of the project". Reducing environmental impacts is one of only five methods of mitigation recognized by CEQ. Has DOE not proposed any mitigation to avoid, minimize, rectify or compensate for impacts? Chapter 2 and Chapter 7 of the FEIS must include a broad range of mitigation measures including those other than reducing impacts. The description of the Proposed Action in the FEIS must also describe DOE plans to compensate for the direct or indirect loss of use of private property.]
- 11 9. [The Rail Alignment DEIS description of the Proposed Action provides no commitment by DOE to provide Payments Equal to Taxes (PETT) as required by the NWPA, as amended. Such funds would be significant to the City (approaching several hundred thousand dollars annually) in the event that DOE were to locate the interchange and/or staging yards and related facilities in the City. The FEIS must include as a component of the Proposed Action a commitment by DOE to provide PETT to the State of Nevada and appropriate local governments. The analysis in Chapter 4 of the DEIS must provide an

¹AWMiller Consulting, Inc., *Conceptual Design Analysis: Construction and Operation Issues Associated with the Co-Location of Rail Sidings to Serve the Department of Energy's Potential Yucca Mountain Related Inter-Modal Transfer Facility and the Rail Sidings to Serve Meadow Valley Industrial Park*, prepared for Board of Lincoln County Commissioners, Pioche, Nevada, November 13, 2003.

estimate of the PETT (including ad valorem or real property tax, sales tax, personal property tax and fuel tax based amounts, among others) that may accrue to the City of Caliente annually.]

12 10. [The footnote to Table 2-30 on Page 2-115 of the Rail Alignment DEIS indicates that DOE has not identified a preference for the Staging Yard location. The purpose of the NEPA analysis is to assist the responsible federal agency in making action decisions. The DEIS provides no insight as to why DOE has been unable to identify a preference for a Staging Yard location. The FEIS should identify DOE's preference for a Staging Yard location and if that is not possible, describe what additional engineering and/or environmental studies will be required to reach such a decision.]

13 11. [The delineation on Page 3-300 of the Rail Alignment DEIS of a "Radiological Region of Influence" is confusing and requires further clarification in the FEIS. As presented in the DEIS, the designation may lead one to conclude a land-use designation for which it is not intended. Rather, the FEIS must clearly describe that the delineation of a Radiological Region of Influence is for risk assessment purposes and is not a formal designation by any government entity. Indeed, some area property owners who have reviewed the DEIS have concluded that the designation by DOE of a "Radiological Region of Influence" in the DEIS may require sellers of real estate in the area to disclose said designation. Further, the FEIS must place in perspective the use of and the meaning of the term Radiological Region of Influence. A study prepared by the University of Nevada Las Vegas Transportation Research Center for Lincoln County found that more than 25,000 rail carloads of every imaginable hazardous material move through the City of Caliente annually.² It is important to note that existing volunteer fire and emergency medical personnel in the City are under-prepared and equipped to effectively respond to a major release of many of the hazardous materials being transported through Caliente presently. This compares to the approximate 200 carloads of spent nuclear fuel and other high-level radioactive waste which DOE proposes to ship through the Caliente area each year. Caliente has not been designated a "Hazardous Material Region of Influence" nor are owners of private property in the area required to disclose the number and nature of hazardous rail shipments moving through the community when offering their private property for sale. The UNLV study further concluded that incremental risk associated with the additional shipments of Yucca Mountain bound radioactive waste would be small compared to the projected risk associated with continued transport of hazardous materials through the City.] [The City believes that if in conjunction with Yucca Mountain related transportation initiatives DOE provides the City with adequate training and equipment to effectively respond to incidents/accidents involving spent nuclear fuel or other high-level radioactive waste, that these capabilities will also greatly improve volunteer response capabilities involving existing shipments of hazardous materials through the community. The net result may be a community in which overall combined

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² Nambisan, Shashi, Vinod Vasudevan, and Ravikumar Ganta, *Analysis of Baseline Rail and Highway Transportation Risks in Lincoln County, Nevada: Final Report*, Transportation Research Center, University of Nevada, Las Vegas, prepared for Board of Lincoln County Commissioners, Pioche, Nevada. November 2006.

risks associated with future shipments of hazardous materials and those associated with radioactive waste will be less than the risks faced by Caliente residents today. All of these issues must be addressed within the Rail Alignment FEIS.]

15 12. [In Section 4.2.5.2.3.1 on Page 4-143 of the Rail Alignment DEIS the first sentence of this section (which describes the Caliente City Hall as simply the "former Union Pacific Railroad Caliente Station") does accurately describe the subject building and leaves a possible impression that it might be unused or vacant. This is incorrect. The first sentence of Section 4.2.5.2.3.1 should be revised in the FEIS as follows, "The Interchange Yard on the Caliente alternative segment would be in the City of Caliente, directly across from the City of Caliente administrative complex which houses City offices, a public library, Community College of Southern Nevada classrooms, meeting rooms and a senior center."]

16 13. [Page 4-245, Section 4.2.8.2.1 of the Rail Alignment DEIS indicates that the Interchange Yard at the interface with the Union Pacific Railroad would be located 3,900 feet to the north of receptors in Caliente. This is not true. The Interchange Yard would be located in downtown Caliente less than 100 feet from the City of Caliente administrative complex and within a few hundred feet on dozens of existing homes and businesses. The related conclusion that there would be no adverse noise impacts from construction of the Interchange Yard in Caliente is unfounded. The FEIS must accurately disclose the proximity of existing receptors in the City of Caliente to the proposed location of construction of the Interchange Yard in Caliente. The FEIS must disclose the nature of adverse noise impacts to existing receptors in Caliente from construction (and operation) of the Interchange Yard in Caliente. Chapter 7 of the FEIS must identify and evaluate measures to mitigate Interchange Yard related construction and operation noise within in the City of Caliente.]

17 14. [The Rail Alignment DEIS on Page 4-246 in Section 4.2.8.2.3 fails to consider the significant contribution to construction train noise that coupling/decoupling of cars will pose to receptors in the City of Caliente. The FEIS must disclose the frequency and level of noise associated with construction train car coupling/decoupling over the 4-10 year construction timeframe for the rail line and the 50-year repository operating horizon. Chapter 7 must include measures to mitigate impacts associated with train coupling/decoupling noise.]

18 15. [Because general commerce trains bringing construction materials into the Caliente area would likely perform car coupling/decoupling operations in the Interchange Yard (located in front of the Caliente City Hall along the existing UPRR mainline), Figure 4-14 on Page 4-248 of the Rail alignment DEIS and related analyses of construction train noise is not complete. The noise contour shown in Figure 4-14 should extend south in front of the Caliente City Hall to capture the location of the Interchange Yard. The analysis of noise should reflect that train horns would be blown by DOE trains entering and leaving to the east of the Interchange Yard (UPRR mainline crossing in downtown Caliente) and again as they cross the access road to the Caliente Youth Training Center on the way to the Staging Yard. The FEIS should estimate the number of times per day DOE locomotives would enter each of the two crossings on their way to and from the

Interchange Yard. Related horn noise impacts, provided as an incremental increase over the frequency of existing train horn blows in Caliente should also be disclosed. Lincoln County estimates the number of additional train horn blasts per day in Caliente to be 10 (2.4 train crossings per day at each crossing, two horn blasts per crossing). Table 4-100 should be revised to better reflect likely noise related impacts in Caliente.]

- 19 16. [Page 4-276, Section 4.2.9.2.4.2 of the Rail Alignment DEIS fails to disclose the impact of delays at the single at-grade UPRR mainline crossing in Caliente attributed to operation by DOE of the Interchange Yard in the community. UPRR trains entering the Interchange Yard may block the single crossing while accomplishing switching and car coupling/decoupling activities. The UPRR mainline crossing may also be blocked by DOE locomotives arriving or departing the Interchange Yard in downtown Caliente. The FEIS must assess the traffic delays associated with UPRR and DOE trains accessing the Interchange Yard in downtown Caliente during both construction and operations phases of the Caliente rail alignment.]
- 20 17. [Chapter 3 of DEIS fails to disclose that the existing volunteer fire department in Caliente is not adequately trained or equipped to handle the myriad of existing rail shipments of hazardous materials through their area and are not adequately trained or equipped to respond to the planned DOE shipments of SNF/HLW through the area. Subsequently, Chapter 4 of the DEIS fails to disclose the impacts to existing volunteer fire departments that will require both training and equipment to be able to adequately provide emergency first response to rail incidents/accidents involving shipments of SNF/HLW. The FEIS must disclose that the existing volunteer fire department in Caliente is not adequately trained or equipped to handle the myriad of existing rail shipments of hazardous materials through their area and are not adequately trained or equipped to respond to the planned DOE shipments of SNF/HLW through the area. In addition, the FEIS must disclose the impacts to the volunteer fire department in Caliente that will require both training and equipment to be able to adequately provide emergency first response to rail incidents/accidents involving shipments of SNF/HLW. This analysis should describe training requirements and impacts to volunteers and related recruitment issues; equipment requirements and related costs to local government.]
- 21 18. [In Chapter 7 of the Rail Alignment DEIS DOE has inappropriately mixed the use of "best management practices" (BMPs) and mitigation. BMPs for which DOE is committed to implement should have been described in Chapter 2, Proposed Action and No-Action Alternatives of the DEIS. Having identified those specific BMPs to which it was committed to implementing, the analysis of impacts in Chapters 4, 5, 6 and 7 of the DEIS should have sought to disclose impacts resulting "after" implementation of BMPs DOE had committed to implement. Mitigation, as defined by CEQ and DOE regulations for implementing NEPA, are those actions designed to avoid, minimize, reduce, rectify or compensate for impacts resulting from the Proposed Action and alternatives "after full implementation of committed to BMPs". The DEIS improperly includes BMPs as mitigation. Accordingly, it is not possible to know which, if any, BMPs DOE is committed to implementing as a part of the Proposed Action and which were considered a priori in analyzing impacts resulting from said action. Chapter 2 of the FEIS must fully disclose those BMPs that DOE is committed to implementing. Chapter 7 of the FEIS

must provide a much more comprehensive identification and evaluation of alternative measures to mitigate impacts identified in Chapter 4 of the DEIS and in the aforementioned comments.]

The City of Caliente encourages DOE to fully consider each of the above-stated comments. Consistent with Section 1503.4 of NEPA, the City expects DOE to respond to each of the aforementioned comments received and looks forward to reviewing the final environmental documents. The City remains committed to meeting with DOE and Nuclear Regulatory Commission staff to identify and seek to resolve issues regarding construction and operation of Yucca Mountain repository system related infrastructure in the area.

Sincerely,

Kevin Phillips
Mayor